

REMARKS

Claims 1, 3 to 4, 8 to 10, 12, 14, 15, 19 to 21, 23, 25, 26, 30 to 32, 34, 36, 37, and 41 to 43 were pending in the application at the time of examination. Claims 1, 3 to 4, 8 to 10, 12, 14, 15, 19 to 21, 23, 25, 26, 30 to 32, 34, 36, 37, and 41 to 43 stand rejected under 35 U.S.C. § 103(a)

Applicant has amended the specification to update the status of U.S. Patent Applications cited therein.

Claims 8, 19 and 30 are amended to correct a spelling error. The spelling error is an informality and so the amendments do not affect the patentability of these claims.

Claims 1, 3 to 4, 8 to 9, 12, 14, 15, 19 to 20, 23, 25, 26, 30 to 31, 34, 36, 37, and 41 to 42 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,966,002, hereinafter referred to as "Saez," in view of U.S. Patent No. 6,640,279, hereinafter referred to as Levy.

Applicant respectfully traverses the obviousness rejection of each of Claims 1, 12, 23, and 34 in view of the combination of references. The rejection stated in part:

Saez does not explicitly teach:

The reception of said one or more obfuscated executable application programs occurs after obtaining a secret, which occurs in response to an enrollment request. In contrast, Saez teaches that the obfuscated executable application programs are received after the enrollment request is issued but before a secret is obtained. After further consideration, examiner determines that it would have been obvious, at the time of the invention to one of ordinary skill in the art to which the subject matter pertains to modify the Saez invention in order to allow the system taught by Saez to receive the program after the secret is obtained:

Sending the program after the secret is obtained would allow the server to encrypt the program based on the requestor's secret. The requestor can then receive the encrypted program and decrypt it accordingly using its secret. Examiner deems these processes of encryption/decryption are well known in the art.

This characterization of Saez not only mischaracterizes the teachings of Saez, but renders Saez inoperable. Specifically, the rejection asserts that Saez is modified to receive the program after the secret is received. However, Saez taught that the program was used in obtaining what the rejection characterizes as the secret. Specifically, Saez taught:

FIGS. 11A through 11C illustrate the structure of a software package including multiple program objects. FIG. 11A provides an overall view of the software package illustrating the arrangement of an executable notifier 1110 at the head of the package, an optional signature section 1120 at the end of the package, with encrypted and compressed program objects 1 and 2 and encrypted access control information 1130 arranged between the executable notifier 1110 and the signature section 1120.

The executable notifier 1110 is illustrated in greater detail in FIG. 11B. As shown therein, the executable notifier 1110 includes a header section 1135 at the beginning of the software package, followed in turn by an executable code section 1140 and a data section 1145. The data section 1145 is followed sequentially by a resource section 1150 and an import table 1155. The resource section 1150 supplies various resources which may be employed by the executable code of section 1140, such as dialog boxes or menus. The import table 1155 includes links to various routines supplied by the operating system, such as print, copy, readfile, createfile, etc.

FIG. 11C illustrates the encrypted portions of the software package, including the encrypted access control information 1160 and the compressed program objects in the form of N blocks 1165 and respective assembly information sections 1170 for each program object.

With reference again to FIG. 11B, the executable code section 1140 of the executable notifier 1110, in general, exercises control over access to the program objects 1 and 2 and performs certain ancillary functions, as follows:

(1) When the user's system first loads the software package in memory, the executable code section 1140 runs a setup routine utilizing displays and dialog boxes supplied from the resource section 1150. The setup routine performs normal setup functions, such as a display of the relevant user license and securing the user's agreement to the license terms. The executable code section 1140 refers to information in the operating system of the user's computer to determine the language (e.g., English, French, German) in which the displays and dialog boxes are presented.

(2) The executable code section 1140 solicits and evaluates the user's requests for access to the program objects. This is achieved by displaying a dialog box when the software package is accessed by the user. The dialog box explains the user's options, such as which programs and/or program options are available without charge, which are available for a fee and which of the latter have been purchased and are still available to be used. To provide such a display, the executable code section 1140 references both the access control information section 1160 (after decrypting section 1160) and a

purchase status file which is produced when the user purchases rights to use one or more objects.

(3) Where a requested use is either free, or already purchased, if not free, the executable code section 1140 decrypts and decompresses the relevant program or data object, and then loads it in memory to be run so that the requested use may be carried out. The section 1140 prevents access to unavailable uses by hooking the functions referenced in the import table of the running program object to control routines in the executable code section 1140, as explained below.

(4) The executable code section 1140 serves to deter dump attacks by erasing from memory certain necessary information from the program object when it loads the program object in running format in memory. Consequently, even if the decrypted and decompressed program object is somehow copied from the memory to some storage device, it could not be reloaded in running format in memory and, thus, is useless after a dump attack.

It will be understood that the executable code section 1140 functions as a "wrapper" or access control executable but without being susceptible to various types of attacks that prior art 15, wrappers have been subject to.

Saez, Col. 16, line 62 to Col. 17, line 67.

Thus, Saez teaches in detail that the software package includes multiple different elements including an executable notifier that in turn includes an executable code section. The executable code section in turn includes code that interacts with the user. The executable code solicits and evaluates the user's requests for access to the program objects. Saez also teaches that a single package is sent to the user irrespective of the particular type of program objects included.

The proposed modification of Saez, as quoted above, does not send the software package until after the secret is obtained by the user. However, Saez teaches that it is the software package that determines whether to request what the rejection characterizes as the secret. Accordingly, since the rejection proposes to withhold the software package, the proposed modification renders Saez inoperable, because the executable portion of the software package would be unavailable to perform the necessary interactions as required by Saez.

The MPEP is unambiguous:

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

MPEP § 2143.01 V., 8th Ed., Rev. 6, pg. 2100-140 (Sept. 2007).

The reordering of Saez, as stated in the rejection, renders Saez unsatisfactory for its intended purpose. As shown in Figs. 12 and 13 of Saez, the first operation in both processes (operations 1210 and 1220 in Fig. 12 and operation 1310 in Fig. 13) is that the user receives the software. This is necessary for Saez to achieve its intended purpose as quoted above. Therefore, the MPEP indicates the rejection is not well founded.

If the rejection purports to break the package into pieces for program objects that require purchase, this changes the principles of operation of Saez, because Saez taught that the same package was used for all types of program objects, i.e., both those that were free and those that requires a purchase. Again, the MPEP directs:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.

MPEP § 2143.01 VI., 8th Ed., Rev. 6, pg. 2100-141 (Sept. 2007).

Since the proposed modification would require a change to the principle of Saez that a single package structure is used for all objects, both free and purchased, the MPEP indicates that the reference is not sufficient to render the claims *prima facie* obvious.

Finally, general knowledge of a smart card and a virtual machine on a smart card fails to establish that Saez could be

implemented on such a resource-constrained device. The rejection has failed to demonstrate that the complex structures and methods of Saez, designed to be used with UNIX and Windows (See Col. 9, lines 27 to 42.), could be implemented in the limited memory available on a smart card. The use of such large operating systems teaches away from implementation on a smart card.

Thus, Applicant has demonstrated that the rejection fails to comply with multiple requirements of the MPEP and so a prima facie obviousness rejection has not been made. Note that only one of the showings is needed to overcome the rejection. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 1, 12, 23, and 34.

Applicant respectfully traverses the obviousness rejection of Claims 3, 14, 25, and 36 in view Saez. To the extent that the obviousness rejection of these claims relies upon modifying Saez to move the receipt of the software, the comments above are applicable and incorporated herein by reference.

According to these claims, an enrollment request is received from a user device for receipt of one or more obfuscated applicant programs. The purchase request of Saez is not for a request for receipt of the software package of Saez, but rather for purchasing the software. The request for the software is different from the purchase request, because the request for the software is associated with step 1210 of Saez and not the purchase request of step 1230. In view of the proposed moving of the delivery of the software, step 1230 does not function as noted above and so there is no motivation according to the MPEP to make such a modification.

Further, the rejection failed to consider the claims as a whole. The claims recite "associating said secret with said target ID following said determining and authentication of said enrollment request." The rejection simplifies these claims to

receiving, determining and transmitting. Thus, the rejection failed to consider the claims as a whole. There is no citation to any teaching or suggestion of the associating process, as recited in these claims, in the rejection.

Finally, general knowledge of a smart card and a virtual machine on a smart card fails to establish that Saez could be implemented on such a resource-constrained device. The rejection has failed to demonstrate that the complex structures and methods of Saez, designed to be used with UNIX and Windows (See Col. 9, lines 27 to 42.), could be implemented in the limited memory available on a smart card. The use of such large operating systems teaches away from implementation on a smart card.

Thus, Applicant has demonstrated that the rejection fails to comply with multiple requirements of the MPEP and so a prima facie obviousness rejection has not been made. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 3, 14, 25, and 36.

Claim 4 depends from Claim 3; Claim 15 from Claim 14; Claim 26 from Claim 25; and Claim 37 from Claim 36. Therefore, each of Claims 4, 15, 26, and 37 distinguishes over the combination of references for at least the same reasons as the claim from which each depends. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 4, 15, 26, and 37.

Applicant respectfully traverses the obviousness rejection of Claims 8, 19, 30 and 41 in view of Saez. The above comments with respect to the proposed modification to Saez are incorporated herein by reference. Moving of the software delivery renders Saez incapable of issuing the purchase request and hence the server incapable of obtaining the system information etc. The required modification renders Saez unsuitable for its intended purpose and so a prima facie obviousness rejection has not been made. Also, the rejection

has failed to demonstrate that the original encryption of the software package of Saez was based on a target ID. Applicant's claim language recites a specific sequence of operations. Similarly, Saez teaches a specific sequence of operation that provides a software package to a user, and only when the user wishes to purchase a part of that package takes additional actions. The selective extraction and rearrangement of Saez completely changes the principles of operation of Saez.

Further, general knowledge of a smart card and a virtual machine on a smart card fails to establish that Saez could be implemented on such a resource-constrained device. The rejection has failed to demonstrate that the complex structures and methods of Saez, designed to be used with UNIX and Windows (See Col. 9, lines 27 to 42.), could be implemented in the limited memory available on a smart card. The use of such large operating systems teaches away from implementation on a smart card.

Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 8, 19, 30 and 41.

Claim 9 depends from Claim 8; Claim 20 from Claim 19; Claim 31 from Claim 30; and Claim 42 from Claim 41. Therefore, each of Claims 9, 20, 31, and 42 distinguishes over Saez for at least the same reasons as the claim from which each depends. Applicant respectfully requests reconsideration and withdrawal of the anticipation rejection of each of Claims 9, 20, 31, and 42.

Claims 10, 21, 32, and 43 stand rejected as under 35 U.S.C. § 103(a) as being unpatentable over Saez and Levy in view of U.S. Patent No. 6,098,056.

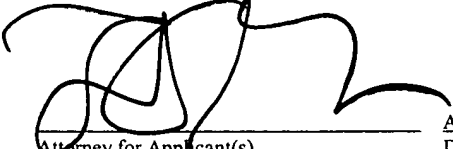
Applicant respectfully notes that, assuming the combination of references is correct, the additional information relied upon from the secondary reference fails to overcome the deficiency of the primary references with respect

to the independent claim from which each of these claims depends. In addition, as noted above, the double encryption with respect to the purchase request fails to teach anything concerning how one of skill in the art would split the encryption between steps 1210 and 1230. Moreover, it requires modifications to the encryption sequences in Saez that have not been acknowledged. General knowledge of double encryption fails to teach or suggest how to modify the primary reference so that it would still work for its intended purpose and how to modify Saez to meet the express sequence recited in these claims. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 10, 21, 32, and 43.

Claims 1, 3 to 4, 8 to 10, 12, 14, 15, 19 to 21, 23, 25, 26, 30 to 32, 34, 36, 37, and 41 to 43 remain in the application. Claims 8, 19, and 30 are amended. Claims 2, 5 to 7, 11, 13, 16 to 18, 22, 24, 27 to 29, 33, 35, 38 to 40 and 44 to 48 have been cancelled. For the foregoing reasons, Applicant(s) respectfully request allowance of all pending claims. If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).


CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 18, 2008.


Attorney for Applicant(s)

August 18, 2008
Date of Signature

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